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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/655,792	09/06/2000	Bernard H. Browne JR.		9120

7590 10/01/2003  
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EXAMINER

WARREN, DAVID S

ART UNIT PAPER NUMBER

2837

DATE MAILED: 10/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/655,792

Applicant(s)

BROWNE, BERNARD H.

Examiner

David S. Warren

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 – 6, 10, 12, 15 and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claims 1 – 3, the phrases “Instant Musician,” “Instant Recording Artist,” and “Instant Composer” are considered to be narrative and do not provide a structural limitation. Perhaps, the applicant would consider such phrases as “a recording subsystem” or “a composition subsystem,” etc. In claim 2, “transformations” is interpreted as changing equalization parameters. If the applicant intended the frequency transformations to include transposition (or some other parameter), clarification is required. Regarding claims 4 and 16, the examiner would like clarification as to “each possible note tied in the database to recorded single musical notes to the actual sounds of all known musical instruments.” This phrase, as interpreted by the examiner, implies that the applicant’s database contains all notes for all known instruments. The examiner questions the feasibility of such a database. Regarding claim 6, does the applicant mean to use “interpreted” instead of “interrupted”? Regarding claim 10, where the applicant acts as his or her own lexicographer to specifically define a term of a claim contrary to its ordinary meaning,

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the written description must clearly redefine the claim term and set forth the uncommon definition so as to put one reasonably skilled in the art on notice that the applicant intended to so redefine that claim term. *Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed. Cir. 1999). The term "beat" in claim 10 is used by the claim to mean "rhythm or accompaniment", while the accepted meaning is "a regular, rhythmical unit of time." The term is indefinite because the specification does not clearly redefine the term. Regarding claim 12, it is not clear as to what is meant by "the function of frequency transformations of music recordings." The examiner has interpreted this to mean a display of EQ parameters. Regarding claim 15, the phrase "with or without" does not provide any further limitation. The examiner has interpreted "with or without" to mean a selectable feature, however, the examiner requests that the applicant clarify the phrase "with or without."

Regarding claim 15, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claim 1 is rejected under 35 U.S.C. 102(a) as being anticipated by Kew et al. (6,063,994). The patent to Kew discloses a computer keyboard used to play the notes of any of several stringed instrument (i.e., the “chosen musical instruments”) – see fig. 4.

Claims 1 and 6 – 9 are rejected under 35 U.S.C. 102(a) as being anticipated by Hara (6,066,795). Regarding claim 1, the patent to Hara discloses a computer keyboard used to play the notes of any of several instruments (see fig. 2B; i.e., “banks” and “programs” represent different musical sounds or instruments). Regarding claim 6, the patent to Hara discloses using the “Alt” key to provide modulation (i.e., changing the correlation between notes of the standard keyboard and those interpreted by the system; see col. 8, paragraph 5). Regarding claim 7, see Hara’s fig. 2B, the “program” and “bank” are the standard MIDI terms for a different instrument (see col. 7, paragraph 9). Regarding claim 8, Hara discloses storing the “musical number” (14, 15, and 16; see col. 10, paragraphs 1 and 2; the “floppy disk” is considered a “portable storage device”). Regarding claim 9, Hara discloses downloading MIDI data from the Internet (see col. 10, paragraphs 3 and 4).

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 2 and 12 – 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Wadhams (5,092,216). Regarding claim 2, Wadhams discloses a “recording subsystem” having a means to combine musical numbers (fig. 5) and to make modifications and transformations within selected frequency bands (col. 11, first paragraph). (Note: Wadham also discloses entering all musical data via a standard computer keyboard – col. 8, paragraph 4.) Regarding claims 12 - 14, Wadhams shows the use of a display (100, fig. 4; albeit mechanical sliders which indicate – i.e., display – and attenuation levels). Wadhams also discloses storage means (146, fig. 4) and the use of a microphone (col. 11, line 3). Wadhams shows the use of combining musical “numbers” in col. 18, last paragraph.

Claim 3 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Arnold et al. (5,908,997). Arnold discloses the use of “composition subsystem” which provides users with a means to compose or create new music having music scores (col. 2, lines 28 and 29), words (fig. 16), and recorded music sounds (col. 2, paragraph 7). Arnold also discloses the use of a mouse (col. 5, lines 55 and 56) and a microphone (84, fig. 2) to enter musical data. (Note: Arnold also shows the use of a QWERTY keyboard, albeit a touch-screen model – see fig. 23). Regarding claim 16, Arnold discloses the use of multiple instrument sounds (208, 210, fig. 7) in which the sounds of each instrument will inherently be stored within a storage means, a display (20) for

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displaying a score, the use of a mouse (col. 5, line 55), sound generation means (136), and a microphone (84, fig. 3).

### ***Allowable Subject Matter***

Claims 4, 10, and 15 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claims 5, 11, and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The applicant is reminded that since claim 4 would be allowable if re-written in independent form, those claims that depend from claim 4 (i.e., claims 5 – 11) will also be allowable dependent claims. However, these claims also depend from a rejected base claim 1 and claims 6 – 9 that depend from claim 1 are hereby rejected. In other words, claims 6 – 9 that depend from claim 4 are objected to, those that depend from claim 1, are rejected.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Gruenbaum (5565641), Kitayama (6392135), and


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Bertram (5646648) all disclose using a standard computer keyboard to enter musical data. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David S. Warren whose telephone number is 703-308-5234. The examiner can normally be reached on M-F, 9:30 A.M. to 6:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Nappi can be reached on 703-308-3370. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

dsw



**ROBERT NAPPI**  
**SUPERVISORY PATENT EXAMINER**